

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

FRANK LLOYD NESCI,
 #55250

Plaintiff,

vs.

DON POAG, *et al.*,

Defendants.

3:10-cv-00712-LRH-VPC

ORDER

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. On February 4, 2011, the court issued a Screening Order directing that certain of plaintiff's Eighth Amendment and retaliation claims as well as claims pursuant to the Americans with Disabilities Act would proceed (docket #7). Before the court is plaintiff's motion for injunctive relief (docket #4).

Injunctive relief, whether temporary or permanent, is an "extraordinary remedy, never awarded as of right." *Winter v. Natural Res. Defense Council*, 129 S. Ct. 365, 376 (2008). "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Am. Trucking Ass'ns, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009) (quoting *Winter*, 129 S. Ct. at 374). The standard for a permanent injunction is essentially the same as for a preliminary injunction, with the exception that the plaintiff must show actual success, rather than a likelihood of success. *See Amoco Prod. Co. v. Village of Gambell*, 480 U.S. 531, 546 n.12 (1987). However, the Ninth Circuit has recently revived the "serious questions" sliding

1 scale test, and ruled that a preliminary injunction may be appropriate when a plaintiff demonstrates
2 serious questions going to the merits and the balance of hardships tips sharply in plaintiff's favor.
3 *Alliance for the Wild Rockies v. Cottrell*, 613 F.3d 960 (9th Cir. 2010).

4 In the instant case, plaintiff seeks an order directing LCC medical personnel to address his
5 complaints that his current treatment for Parkinson's disease is inadequate and to refrain from retaliating
6 against plaintiff for filing this lawsuit. Although plaintiff has set forth allegations in his complaint that
7 state cognizable claims, plaintiff has not established that he is likely to succeed on the merits of such
8 claims. As such, at this time, plaintiff's motion for a temporary restraining order and preliminary
9 injunctive relief is denied without prejudice and with leave to renew, if necessary.

10 **IT IS THEREFORE ORDERED** that plaintiff's motion for injunctive relief seeking treatment
11 and enforcement of prohibitions against retaliation (docket #4) is **DENIED** without prejudice.

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13 DATED this 30th day of June, 2011.



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16 LARRY R. HICKS
UNITED STATES DISTRICT JUDGE